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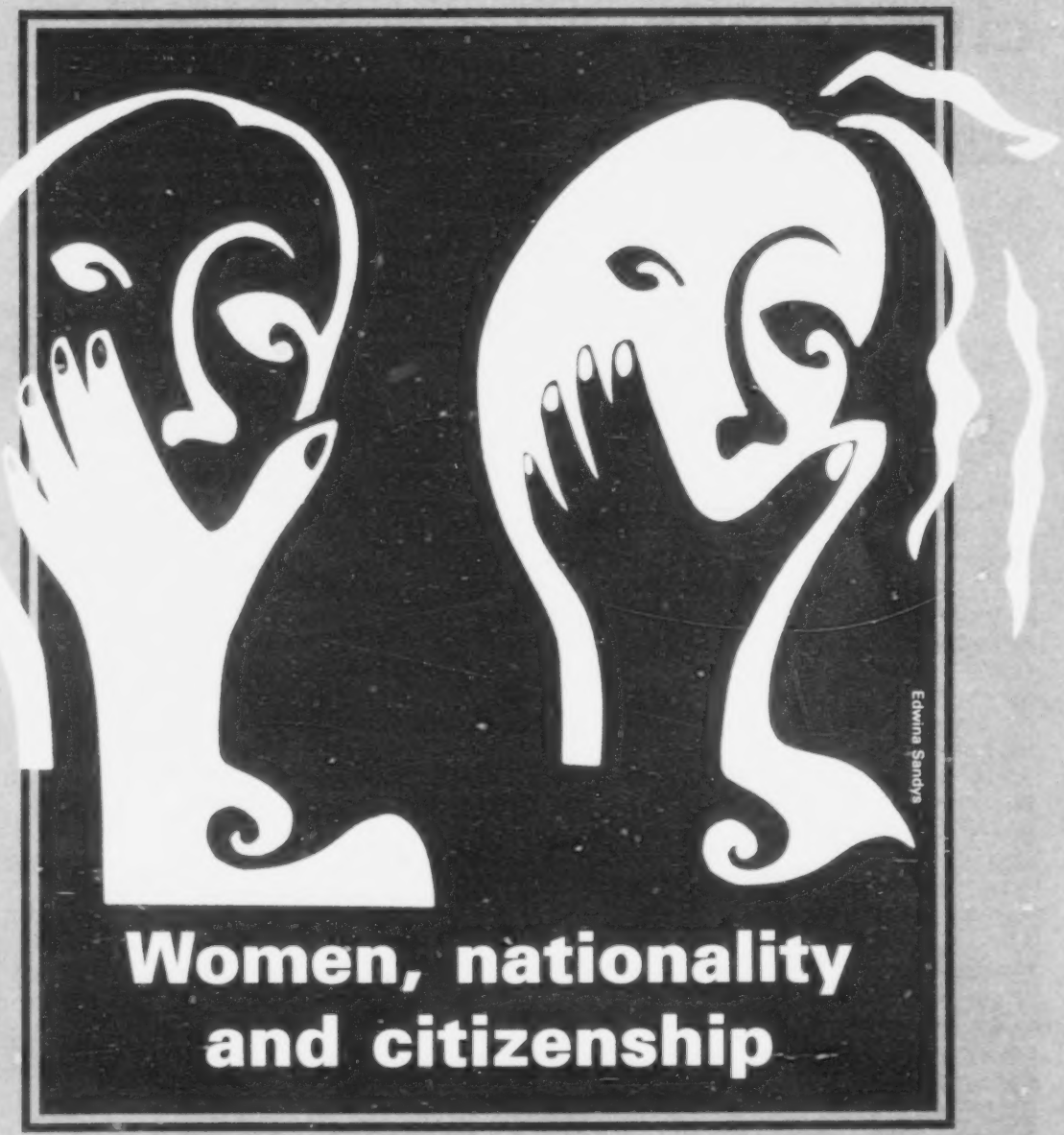

Women, nationality and citizenship

UNITED NATIONS
Division for the Advancement of Women
Department of Economic and Social Affairs

Women, nationality and citizenship

Introduction

This issue of *Women2000 and Beyond* considers discrimination against women in nationality laws. It examines laws that differentiate between women and men in the acquisition and retention of nationality, as well as in relation to the nationality of their children, highlighting the legal and practical disadvantages such laws cause.

As the section on "Nationals, citizens, stateless persons and refugees" makes clear, it is the sovereign right of States to devise their own nationality laws and immigration requirements. This section indicates that such laws assign different legal statuses to persons within a State. People may be nationals (citizens); legal aliens (foreigners legally in the State under its immigration laws); illegal aliens; stateless persons (with no state of nationality); asylum-seekers; and refugees. Some of the people in these categories may have more than one nationality. The full advantages of citizenship, including unqualified rights of entry and residency in the State, as well as access to the full range of public benefits and services, are usually accorded only to nationals/citizens.

The next section, "Nationality of married women", describes the way that gender-based discrimination in nationality laws typically operates. Where a couple has different nationalities prior to marriage, the husband's nationality may be automatically imposed on his wife upon marriage. Nationality laws can deny a wife's nationality to her husband, or a husband's nationality to his wife, unless stipulated conditions are complied with. Where parents have different nationalities, laws can bestow the nationality of the father upon a child, but deny the child her mother's nationality.

"Addressing discriminatory nationality laws" considers the ways in which international law has been used to address the consequences of the application of discriminatory nationality laws. It outlines the relevant provisions of international instruments, including those relating specifically to the nationality of married women, and pertinent provisions in the human rights treaties. It gives greatest attention to the Convention on the Elimination of All Forms of Discrimination against Women, 1979.

This section also surveys national and international case law on discrimination in nationality laws. It considers how human rights norms relating to freedom of movement, freedom of information, family rights and other rights have been increasingly applied to ensure the rights of family members to reside and work in the same State, regardless of their different nationalities. These cases can be drawn on in litigation in other jurisdictions to strengthen legal arguments against discrimination in nationality laws.

The section on "Alternative visions" puts forward approaches being adopted by States to avoid gender-based discrimination in the context of nationality. One approach is to avoid the problems caused by family members having different nationalities by making the acquisition of dual nationality easier. Here attention is drawn to the emerging approach in the European Union.

The final section outlines some of the obstacles to the effective application of international human rights law where nationality issues are concerned. It recommends measures for States and non-governmental organizations to ensure compliance with human rights standards, so that individuals do not suffer adverse consequences as a result of nationality laws that discriminate between women and men.

Nationals, citizens, stateless persons and refugees

Nationality signifies the legal relationship between an individual and a State. It not only provides individuals with a sense of belonging and security, but also creates a legal link between the individual and her State. Nationals are entitled to the protection of their State—which is of increasing significance in the globalizing world with its large-scale movements of people. International law makes clear that a State may provide its protection to a national who has suffered an international wrong while abroad. Thus, a State is entitled to provide its nationals abroad with consular assistance, and make a diplomatic claim for harm caused to its nationals which constitutes violations of international law. A State has a duty, in international law, to admit its nationals and allow them to reside in its territory. The unqualified right to hold the passport of the State is also a function of nationality.

In many cases, nationality is the legal basis for the exercise of citizenship. Although frequently used interchangeably with nationality, the term citizenship has a wider meaning, and

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denotes a status bestowed on full members of a community.[1] In many countries, the full exercise of civil, political, economic, social and cultural rights is predicated on nationality. Nationality frequently determines whether individuals are entitled to participate fully in the political process, including through voting, and to exercise the right to work, the right to education and the right to health. The right to own land may also be contingent on nationality. It may also determine whether individuals may hold public office, or have access to the judicial system or public services, such as legal aid. As the Committee on the Elimination of Discrimination against Women noted in its General Recommendation 21 on Equality in Marriage and Family Relations, "nationality is critical to full participation in society".[2]

Those who lack the nationality of the State in which they reside are regarded as aliens. Aliens may incur a range of legal consequences which have practical and personal disadvantages. The right of non-nationals to reside in the State in which they live is not absolute, but conditional. Non-nationals may also have limited access to the full range of citizenship rights. They may be denied the right to vote and to exercise other aspects of the right to political participation. They may have limited access to public office or the judicial system. Their enjoyment of the rights to work, freedom of movement or the full range of education, health, housing and social security rights and benefits may be more limited than that of nationals.[3]

Bestowal of nationality is an attribute of State sovereignty and, within some constraints imposed by international law, each State is entitled to lay down its own rules governing the grant of its nationality, with the International Court of Justice stating in 1955 that "international law leaves it to each State to lay down the rules governing the grant of its own nationality".[4] Nationality laws are rarely simple or comprehensive, and their technical nature makes them inaccessible to many people. Moreover, movements of peoples across international borders frequently make the laws of more than one State applicable in the determination of a person's nationality. Inconsistency between, and lack of coordination of, nationality laws between and among States means that nationality may be uncertain or contested, causing hardship to the individuals concerned.

The determination of its nationals defines the State's self-identification, for example, as a homogeneous political entity, or as a State committed to multiculturalism. Ethnic conflicts over the last decade have demonstrated the violence, regional instability and personal insecurity that can be generated by claims for independent statehood defined by nationality in some sub-State entities.

Sovereign States closely guard their right under international law to determine the construction of their populations through their nationality laws, as well as through laws and policies on immigration which are closely connected to nationality laws. Just as there is no uniformity in nationality laws, the principles on which States base their criteria for immigration are also diverse. Exclusive nationality regimes, coupled with restrictive immigration laws and policies, which have been adopted by many States, make issues relating to nationality especially pertinent for the twenty-first century.

Individuals within States are categorized as nationals or non-nationals. Non-nationals within a State fall into subcategories, which include legal and illegal aliens, stateless persons, asylum-seekers and refugees. Important social and legal consequences flow from the location of a person in one of these categories, which are described below.

Nationals

International law requires only that there is a "genuine connection" between a person and the State for the bestowal of nationality. Although the criteria for such a "genuine connection" differ from country to country, the most commonly recognized are birth in the territory of the State, irrespective of the nationality of the parents (*jus soli*), or descent by birth to a national of the State or through ancestral claims (*jus sanguinis*). Some States favour one of these positions; most adopt a combination of the two.

Nationality of a State can also be acquired through naturalization. This is generally claimed through some link created subsequent to birth, such as residence in the State for a specified period of time, or the establishment of a permanent domicile in the State. In its *Advisory Opinion on Amendments to the Naturalization Provisions of the Constitution of Costa Rica*, the Inter-American Court of Human Rights stated that naturalization is based on a "voluntary act aimed at establishing a relationship with any given political society, its culture, its way of life and its values".[5] The possibility of acquiring nationality through naturalization highlights the close relationship of the laws on nationality with those on immigration—with the rules on who will be granted entry into a State usually controlling who will be entitled to apply for, and ultimately attain, that State's nationality.

Multiple nationality

An individual may have dual nationality or even multiple nationalities. She may be a national by birth in a State which accords nationality to children born within its territory. At the same time she may hold the nationality of the State or States of her parents through descent. Dual nationality can be sought deliberately by individuals who seek to satisfy residency and other requirements for naturalization in a State, while, at the same time, retaining their nationality acquired through birth or by descent. Dual or multiple nationality has traditionally been viewed as

problematic by States because of the perceived potential for generating conflicting political loyalties.

Aliens/non-nationals

An alien is a person residing in a State other than that of her nationality. A legal alien has complied with all immigration requirements, with the appropriate documentation, while an illegal alien has not.

Stateless persons

Despite the legal vacuum to which a person without a nationality is consigned, it is possible to be born stateless. This may occur when a child is born to stateless parents, asylum-seekers or refugees. A person may be stateless if she is born outside the State or States of her parents' nationality where those States confer nationality on the basis of birth within their territory, or in a State which solely accords nationality by descent. A person may also become stateless by renouncing her own nationality by mistake, or even deliberately, in the hope, for example, that it will enhance her prospects of receiving asylum, or perhaps to avoid a criminal charge.

Large numbers of people may become stateless as a result of deliberate government action rescinding the nationality of a section of the population. This may be because of a policy to rid the State of peoples perceived to be undesirable. In some cases, States have rescinded the nationality of an entire ethnic group. Denationalized persons may be forced to leave, sometimes violently. For example, the removal of Zairian nationality from ethnic Tutsis in Zaire (now the Democratic Republic of the Congo) in 1996 contributed to internal conflict and wider warfare in the African Great Lakes region.

Statelessness may also be the consequence of the creation of a new State, or the dissolution of a State. For example, the creation of the State of Israel in 1948 rendered large numbers of Palestinians stateless. Indeed, in 1998, the United Nations High Commissioner for Refugees estimated that there were three million Palestinians who lacked effective nationality.[6] The dissolution of the Soviet Union brought Soviet citizenship to an end, and left some 287 million individuals with, or in need of, a new nationality.[7] Among the first tasks of the 15 successor States of the Soviet Union were the precise definition of their nationals and the development of new rules for the granting of nationality.

Not all persons living in the territory of a newly created State will be accorded the right to its nationality under its new laws. This is particularly the case where nationalism has been a factor in the break-up of the previous State. Thus, recent ethnic conflicts and communal violence resulting in the recognition of new States have created statelessness, or disputed citizenship for large numbers of people.

Mass expulsions of displaced persons who have not acquired the nationality of their State of residence also cause statelessness. Such people may have resided for many years as displaced persons, without acquiring the nationality of their State of residence. The instability generated by the presence of large numbers of residents without nationality and citizenship rights can also be a cause of conflict within a State. Even if non-national stateless persons are allowed to stay in their country of residence, denial of the other rights of citizenship may lower their quality of life and generate feelings of insecurity. Depending upon the nationality and immigration laws of other States, expelled people may have no right of entry or abode elsewhere.

Some people lack effective nationality and, despite being entitled to the nationality of a particular State, suffer the consequences of statelessness. Documentation, such as a passport, a birth certificate or a certificate of nationality by descent, is required to prove nationality. People whose births are not registered may be unable to document their nationality. Similarly, people whose documents have been lost or destroyed during war or in flight may be unable to demonstrate their nationality and be regarded by State authorities as illegal aliens or stateless. Documentation may be deliberately appropriated or destroyed as a means of control. For example, trafficked women typically have their passports and other documentation confiscated by unscrupulous pimps or employers. A national with a foreign wife may take possession of or destroy her documentation to assert control.

A stateless person falls outside the system that links an individual to State protection, and does not enjoy the security associated with nationality and citizenship. She lacks the documentation which allows her to cross international borders legally,[8] has no automatic right of residency in any State and has no access to the services provided by the State to its nationals.

Refugees

People who are outside their State of nationality may be able to claim refugee status under the United Nations Convention relating to the Status of Refugees, 1951 (Refugee Convention), and its 1967 Protocol.

A refugee is a person who cannot return to her own State because of a "well-founded fear of persecution for reasons of race, religion, nationality, membership of a particular social group or political opinion".[9] Refugee status invests an individual with the rights accorded by the Refugee Convention, but does not confer the nationality of the State of refuge on her. Refugees may live for many years in their State of refuge without acquiring its nationality. Legal determination of whether an individual meets the legal definition of refugee is frequently

a long and difficult process. Pending that determination, those claiming refugee status are relegated to the limbo status of asylum-seekers.

The nationality of married women

Because of its consequences in national and international law, nationality is critical for the full enjoyment of personal security. However, the nationality laws of many States disadvantage women. This chapter surveys three legal approaches which have posed particular problems in this context.

Married women's dependent nationality

Historically, many States adopted the patriarchal position that a woman's legal status is acquired through her relationship to a man—first her father and then her husband. Although the laws of most States provide that nationality is conferred through birth or descent, or a combination of these, a widely accepted principle—law in most States at the beginning of the twentieth century[10]—was that of dependent nationality, or the unity of nationality of spouses. The result of the application of this principle was that a woman who married a foreigner automatically acquired the nationality of her husband upon marriage. Usually this was accompanied by the loss of her own nationality. The rationale for the principle of dependent nationality derived from two assumptions: first, that all members of a family should have the same nationality and, secondly, that important decisions affecting the family would be made by the husband.

The assumption that all members of a family should have the same nationality was based on the view that nationality entailed loyalty to one's State of nationality. It was believed that if a married woman were to have a nationality different from that of her husband, her loyalties would be divided, and she might be placed in a conflictual and intolerable situation. This assumption was also linked to the idea of citizenship, which relates to a person's public identity: the relationship between an individual and the State. Loyalty to the State is the counterpart of the State's duty to protect its citizens. In many States, the assumption that a married woman's primary location is in the private sphere, within the home, and under the protection of her husband, has prevailed. Accordingly, her need for a separate public identity and legal relationship with a State is not taken into account.

In States where one of the primary obligations of citizenship is military service, a male definition of citizenship is reinforced. In an international order in which conflict between States was deemed inevitable, permitting spouses to maintain separate nationalities was regarded as unacceptable since conflict between the couple's different States would cause divided loyalties within the household. Potential for familial disruption on these grounds was resolved in favour of family unity, with the wife being required to assume her husband's nationality. Allowing her to hold dual nationality, predicating that loyalty was owed by her to her State of nationality, as well as that of her husband, was not regarded as a viable option. Where the assumption that important family decisions would be made by the husband was concerned, the prevailing view was that the choice of the couple's place of abode would be made by the husband. Generally, this would be in his State of nationality.

The consequences of the application of the principle of dependent nationality can be extreme. By virtue of its application, a woman who marries a foreigner, but who chooses to remain in her own country, will be deprived of her nationality of origin, as well as access to the civil, political, economic, social and cultural rights which depend on that nationality. She will become an alien in the place where she has always resided, and lose all the privileges of citizenship. Where citizenship is restricted for national women (for example where they lack legal capacity to hold or inherit land), the position of the now non-national married woman is one of total dependence upon her (foreign) spouse. Her identity and sense of belonging to her State of origin, and of being important to that State, are compromised and disregarded because of her reduced status within the place she has always called home. Moreover, the State's lack of interest in her potential contribution to its well-being is indicated by its willingness to make her assume a new nationality.

The application of the principle of dependent nationality also means that if the husband acquires a new nationality, for example, through naturalization, a decision that his wife may not have been involved in, or consulted about, her nationality will change with his. Similarly, if the husband loses his nationality, so does the wife. In addition, if the laws of the husband's State of nationality stipulate that a wife retains his nationality during the marriage only, its termination, through death or divorce, will end her entitlement to her husband's nationality and the protection that it may provide. A woman in these circumstances will be able to revert to her nationality of origin only if the laws of that State so allow. If they do not, she will be stateless, and may find that she is unable to return to her own country to live. Even if she is able to do so, she may find herself without the rights which flow from nationality.

Laws that entrench the principle of dependent nationality disempower married women by depriving them of any choice about their nationality. As such, these laws, and married women's nationality in general, have long attracted the attention of feminist activists. They were among one of the first issues that women sought to place

Convention on the Nationality of Married Women, 1957

3 (1): Each Contracting State agrees that the alien wife of one of its nationals may, at her request, acquire the nationality of her husband through specially privileged naturalization procedures; the grant of such nationality may be subject to such limitations as may be imposed in the interests of national security or public policy.

(2): Each Contracting State agrees that the present Convention shall not be construed as affecting any legislation or judicial practice by which the alien wife of one of its nationals may, at her request, acquire her husband's nationality as a matter of right.

on the international legal agenda, alongside other issues of social and political inequality affecting women, including the right to vote. In their recent article, "Remembering Chrystal MacMillan: Women's equality and nationality in international law", Karen Knop and Christine Chinkin describe how Chrystal MacMillan chaired a women's demonstration on married women's nationality at The Hague in the Netherlands, and led a deputation from that demonstration to the Hague Codification Conference held there in 1930.[11]

The establishment of the League of Nations after the First World War provided an arena at the international level in which to seek change. Much as a result of women's dissatisfaction with the Hague Convention on Certain Questions Relating to the Conflict of Nationality Law which was formulated at the Codification Conference, an intensive campaign was mounted within the League for the elaboration of an international treaty on nationality law that would give married women the same rights as men to retain and change their nationality.[12] The campaign involved coordinated protests, including a worldwide telegram campaign, and submissions to League bodies. Within the League, a Consultative Committee on Nationality was created, but no treaty on women's nationality was adopted.

The Inter-American Commission on Women, created in 1928, had greater success in this context. Charged by the resolution which created it with "the preparation of juridical information and data of any other kind which may be deemed advisable to enable the Seventh International Conference of American States to take up the consideration of the civil and political quality of women" in the Americas, the Commission presented a draft convention on nationality to that Conference.[13] This draft became the 1933 Montevideo Convention on Nationality of Women, which provides that there should be no distinction based on sex with respect to nationality. The work of that Commission also led to the inclusion in the Montevideo Convention on Nationality, also of 1933, of the principle that neither matrimony nor its dissolution should affect the nationality of the husband, the wife or their children.

The creation of the United Nations provided another forum in which to address the issue of women's nationality. The United Nations Commission on the Status of Women, established in 1946 to prepare recommendations and reports to the Economic and Social Council on promoting women's rights in political, economic, civil and educational fields and to make recommendations on urgent problems requiring immediate attention in the field of human rights,[14] identified this area as one of its priority concerns. Responses to the annual Questionnaire on the Legal Status and Treatment of Women circulated by the Commission revealed that in most countries laws were based on the principle of dependent nationality and the assumption that married women would automatically take their husband's nationality. A series of reports, prepared by the Commission's Secretariat based on these responses, also showed that discrimination against women was frequently a consequence of conflicts between laws relating to nationality, marriage and divorce. Inspired by the 1948 Universal Declaration of Human Rights, which proclaims both the idea of non-discrimination and the right to a nationality, the Commission elaborated the Convention on the Nationality of Married Women. Adopted in 1957, this Convention establishes the independent nationality of a married woman.

Activities within the League of Nations, as well as the adoption of the Inter-American and United Nations Conventions on women's nationality, led many States to change their laws so that women had some autonomy in this area. However, not all States changed their laws, and some newly independent States maintained the limitations upon the retention of a separate nationality by married women that had existed under colonial laws. These laws had

Montevideo Convention on the Nationality of Women, 1933

There shall be no distinction based on sex as regards nationality, in their legislation or in their practice.

Montevideo Convention on Nationality, 1933

Neither matrimony nor its dissolution affects the nationality of the husband or wife or of their children.

been introduced originally by colonial Powers with common law systems (such as the United Kingdom) and by those with civil law systems (such as Belgium and France). Despite their origins, amendment of these laws was resisted, frequently reflecting the national or cultural subordination of women. Indeed, the laws of a number of States still preclude married women from retaining their nationality, and maintaining a separate nationality from that of their husbands.

Retention of a separate nationality by married women

Reforms that entitle married women to retain their independent nationality do not resolve all disadvantages which women who marry foreigners face. Such reforms do not address immigration and residency rights for foreign spouses, issues relating to the nationality of children and legal restrictions imposed on alien spouses, such as limitations on the right to work, access to credit and land ownership.

Entitling married women to retain their own nationality means that it is possible for different members of a family to hold different nationalities and thereby enjoy differing rights of entry into and residency in States, as well as varying access to State services and benefits.

Increasingly, States have restricted entry to foreigners through stringent immigration controls and visa requirements. In many cases, these restrictions have created legal obstacles for women married to foreigners who wish to live with their husbands in their State of nationality, and for women married to foreigners who wish to live in their husband's State. There may be even greater complications if the couple wishes to live in a State where neither of them has nationality, such as the State in which both or either are migrant workers.

In some States, the foreign spouse of a national can acquire the latter's nationality only through naturalization, usually after a specified period of residence. Other conditions such as language proficiency and proof of commitment to the State may also be imposed.

Women who marry foreign men and who do not acquire their husband's nationality may be especially vulnerable to abuse because of the inherent powerlessness of their position. For example, a woman may have entered the State at the request of her husband for the very purpose of marriage, perhaps as a "mail-order bride". This growing phenomenon leads hundreds of thousands of women to leave their countries each year to marry men with whom they have made contact through international matchmaking services, more and more via the Internet.[15] Women who have entered as low-paid, temporary migrant workers, typically domestic servants dependent upon their employers, women seeking asylum and those who have been trafficked, may also marry men in their country of residence and be unaware that marriage does not automatically grant nationality or unqualified residency rights in their husbands' States. Problems may arise where a young girl, whose family has emigrated, is sent back to her family's country of origin for the purpose of marriage. She may be below the legal age for marriage in the country in which she has grown up, have no knowledge of the intended spouse, his family or their country, and no independent means of economic support.

Such marriages can be successful, but the opposite can also be true. Women who have married in these scenarios tend to be without resources and, accordingly, totally dependent upon their husbands—economically, socially and sometimes linguistically. The husband may look down on the wife because she is a foreigner, despise her for her dependence upon him and seek to humiliate her in a variety of ways. The husband may also have assumed responsibility for the legal requirements for her residency and, ultimately, acquisition of nationality, but in fact may have failed to do so. The barriers he is able to create between his foreign wife and the outside world can isolate her and subject her to his control.

Women, who have no unconditional right to stay in a country if they leave their marriage to a national before satisfying the requirements for permanent residency or naturalization, are dependent upon the marital relationship and can be vulnerable to violence and exploitation. They may be wary of reporting domestic violence or other abuse to the authorities for fear of deportation. This will be particularly so if they lack documentation or their documents are no longer in their possession. Seeking assistance may expose such women to abuse or contempt from the authorities. Authorities may also be reluctant to offer assistance since the marital relationship is regarded as private and consensual. Another risk is of the husband terminating the marriage (for example if his economic situation worsens and he sees his wife as a financial burden, or in the case of a mail-order bride perhaps intending to acquire a new bride through the same means) before a wife has gained her right of residency.

In all these situations, whether the woman's own State of nationality will accord her legal or practical assistance depends upon many factors. These include whether she has retained that nationality and has the documents in her possession testifying to that nationality; whether the State regards marriage (even to a foreigner) as a private matter that does not warrant intervention even when it is needed; and the relations between the States in question.

Problems can also occur where a married couple of different nationalities lives, or seeks to live, in the State of the wife's nationality. The laws of a number of countries impose longer residency requirements on a husband

who wishes to acquire the nationality of his wife than on a wife to acquire that of her husband. Indeed, the laws of some countries make it impossible for the husband to become a national of his wife's State. Many States also maintain laws which make it harder for the spouses or fiancés of women nationals than the spouses or fiancées of male nationals to enter and reside in the country. In these cases although the legal impact falls upon the foreign man, the restrictions are based on discriminatory attitudes based on stereotypical expectations—that a wife should follow her husband and that a married couple should live together in the husband's State of nationality.

The couple may choose to live together in the wife's State of nationality. However, if a non-national husband is subsequently deported for some wrongdoing, his wife faces such dilemmas as going with him to a country of which she is not a national, separation or family break-up. Authorities within her own State may be unsympathetic to requests to allow her husband to remain, deeming it to be her marital duty to follow him to his State, regardless of whether she has any ties there, can speak the language, or of the dislocation to her life that such a move inevitably entails.

In many of these situations, gender-based discrimination interlocks with other forms of discrimination including that based on race, ethnicity, caste and economic status, which can affect public officials and private relationships. Restrictive immigration and stringent residency requirements are often underpinned by attitudes of racial discrimination and stereotypical views of the composition of migrant peoples and the reasons for their migration. States seek to choose those they regard as "desirable" aliens.

Discriminatory attitudes can be seen in other contexts. There may be an underlying suspicion that arranged marriages between foreign men and local women are "non-genuine".

Example of reservation to article 9: Algeria

The Government of the People's Democratic Republic of Algeria wishes to express its reservations concerning the provisions of article 9, paragraph 2, which are incompatible with the provisions of the Algerian Nationality Code and the Algerian Family Code. The Algerian Nationality Code allows a child to take the nationality of the mother only when:

—The father is either unknown or stateless;

—The child is born in Algeria to an Algerian mother and a foreign father who was born in Algeria;

—The child is born in Algeria to an Algerian mother and a foreign father who was not born on Algerian territory, under article 26 of the Algerian Nationality Code, providing the Ministry of Justice does not object.

It is frequently assumed that male immigrants will seek work in the paid workforce, and may thereby increase local unemployment by taking the available jobs, or become a burden upon the State if unemployed. At the same time, there may be a notion that it is men who should determine the proper constitution of the public realm—the workforce, the market, religious congregations and the security forces—and that the entry of foreign men to join their wives will dilute the national identity and may subvert the national interest. These assumptions often lead to a reluctance to allow such men to immigrate or acquire nationality.

In contrast, a foreign woman entering a State to marry a male national will often be assumed to be dependent on her future husband, and thus not a potential burden upon that State. This can be seen in the tolerance accorded to the operation of mail-order-bride schemes. However, if she does seek the assistance of the State (for example, if she seeks State protection from an abusive husband), she may find that criminal laws applicable to the abuse are not enforced against her husband. She may also find there are legal obstacles to her remaining in the country or accessing State benefits on her own behalf.

Nationality of children

Although the laws of most States now entitle a woman to maintain her independent nationality upon marriage, many States retain laws that discriminate between women and men with respect to the nationality of their children, particularly in the area of acquisition of nationality by descent. Most legal regimes that provide for nationality by descent accord the nationality of the father on his children, irrespective of the nationality of his spouse. It is less usual for such regimes to devolve the nationality of a woman married to a foreigner on her children automatically. In many States, nationality through descent from the mother is conferred only where she is unmarried or the father is unknown or stateless. Laws which disadvantage women in this way enshrine the priority of men's rights over the children of a marriage—without any inquiry into the nature of the marriage, such as whether it is violent, abusive or the result of economic convenience.

In its reservation to article 9 of the Convention on the Elimination of All Forms of Discrimination against Women, which grants women equal rights with men with respect to the nationality of their children, Egypt

explains the reason why Egyptian law precludes Egyptian women who marry non-Egyptians from passing their nationality to their children:

> "This is in order to prevent a child's acquisition of two nationalities where his [sic] parents are of different nationalities, since this may be prejudicial to his future. It is clear that the child's acquisition of his father's nationality is the procedure most suitable for the child and that this does not infringe upon the principle of equality between men and women, since it is customary for a woman to agree, upon marrying an alien, that her children shall be of the father's nationality."[16]

The explanation reflects the long-standing objection to dual nationality, but provides no evidence of its "prejudicial" effects. No reasons are given to explain why acquisition of the father's nationality is the "most suitable procedure" for a child, especially as the father is unlikely to be the primary caregiver. In the case of Egypt, an Egyptian woman who has married a foreigner is unable under Egyptian law to pass her nationality to her child. In extreme cases, in States with similar laws, a foreign child living with her mother in the mother's State of nationality could face deportation, presenting her with the dilemma of leaving her State, or being separated from her child.

In other situations, a mother whose child has a nationality different from her own, and who has no independent right of residence in the State where the child is located, may face legal obstacles to continued enjoyment of custody of, or access to, her child, in particular if her marriage is terminated by divorce or death. If the marriage is abusive, the foreign mother might have to choose between staying with the father or losing her child. If the mother has custody of the child after break-up of the marriage, the father may seek possession of the child with the support of his State—also the State of nationality of the child. If the father leaves and takes (even kidnaps) the child to a State where the mother has no right of residence (for example, his own State), her rights of access may be severely undermined. If the laws of her own State do not bestow her nationality upon her child, the mother's State cannot exercise its right of diplomatic protection to recover the child, and its standing to take up claims on the mother's behalf will be limited.

Even if the mother and child are living in the mother's State of origin, the child might be regarded as a foreigner under the law of that State, and be ineligible for full access to State education, health care or property rights. In the case of *Unity Dow*, for example, Ms. Dow's non-Botswanan children, who lived with her, a Botswanan national, in Botswana, were not entitled to government-assisted State education. Siblings living in the same household may have different nationalities, and thus different

Concluding comments on nationality laws by the Committee on the Elimination of Discrimination against Women

Algeria (2000)

The Committee is concerned by the fact that mothers cannot transmit their nationality to their children in the same way that fathers can. Citizenship is a fundamental right which men and women must be able to enjoy equally.

The Committee recommends the revision of legislation governing nationality in order to make it consistent with the provisions of the Convention.

Iraq (2000)

The Committee is concerned that the State party explicitly ruled out the possibility of withdrawal of its reservations to article . . . 9 . . . The Committee is also concerned that Iraq's nationality law, which is based on the principle that the members of a family should all have the same nationality and that none should have dual nationality or lose their nationality, does not grant women an independent right to acquire, change or retain their nationality or to pass it on to their children.

Jordan (2000)

The Committee is concerned that Jordanian nationality law prevents a Jordanian woman from passing on her nationality to her children if her husband is not Jordanian. This is an anachronistic situation at a time when Jordan is making major strides in its economic and democratic development and when marriage between persons of different nationalities is increasingly common.

Morocco (1997)

. . . The Committee remained concerned at the profound inequalities affecting the status of women in Morocco . . . Laws regarding the punishment of adultery and the ability to pass on nationality continue to benefit the husband to the detriment of the wife.

entitlements. Again, in the case of *Unity Dow*, Ms. Dow's eldest child, born outside of wedlock in Botswana, was entitled to Botswanan nationality, and the benefits it entailed, while her siblings, born to Ms. Dow and her American husband, were not. Other complex issues can be raised as a result of the conflicts of laws: the principles used by courts to determine the applicable law in any given situation where different legal systems may prevail. Where these laws depend upon nationality, different legal systems may be deemed to apply to different members of the same family unit.[17]

In some national legal systems, the nationality of the mother is bestowed upon the child to the exclusion of that of the father, or there may be onerous preconditions before the father's nationality is conferred on a child, particularly where the child has been fathered abroad with a foreign mother, or where the child is born out of wedlock.[18] Such provisions recognize that the mother is likely to be the primary caregiver, but also reinforce the gender-based stereotypes of differing parenting responsibilities for women and men. Considerable problems may also confront a woman in such circumstances. The father's State may reject claims for child support made by a foreign mother whose child does not hold the father's nationality. A woman may be vulnerable within her own State for bearing the child of a foreigner, especially if the father is a member of a foreign military force. She may therefore seek to migrate to the father's State of origin, where neither the mother nor the child has residency rights accruing from the father's nationality. At the same time, the father's State may have an interest in protecting its nationals from their paternal responsibilities. This may be so particularly if the father is a member of its armed forces and the child was fathered during a military campaign.

Other problems may arise for children born in a State where neither parent is a national. The couple may be living in the State as migrant workers, possibly from different States, as refugees or stateless persons. Not all States confer nationality on the basis of place of birth, and the children of migrant workers, refugees or stateless persons born in these States do not automatically acquire their nationality through descent. Some States accord nationality to children born in their territory, while denying it to their parents. In practical terms, the child's nationality is devalued if the right of her parents to remain in the country is insecure.

Addressing discriminatory nationality laws

Contemporary international law approaches gender-based discrimination in nationality laws in two ways. The first addresses the situation where spouses have different nationalities by entitling a married woman to retain her nationality irrespective of the nationality of her husband. It also seeks to facilitate the acquisition by both spouses of the other spouse's nationality through requirements which are more flexible than for others applying for naturalization. The second seeks to minimize the legal consequences of lack of nationality by attempting to reduce the incidence of statelessness and guaranteeing human rights protections to all persons within a State's jurisdiction, regardless of their nationality.

As will be seen, neither approach is comprehensive, and there are problems with both the scope of legal protection provided and implementation.

Convention on the Nationality of Married Women

The first international treaty to address problems women face as a result of discriminatory nationality laws was the Convention on the Nationality of Married Women, adopted by the General Assembly of the United Nations in 1957. This treaty builds on article 15 of the Universal Declaration of Human Rights, which proclaims that "everyone has the right to a nationality" and that "no one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality". The Convention obliges States parties to ensure that neither the celebration nor the dissolution of a marriage between a national and an alien, nor change of nationality by a husband, shall automatically affect the nationality of the wife. States parties are also obliged to ensure that neither the voluntary acquisition of the nationality of another State nor renunciation of its nationality by one of its nationals shall prevent the retention of its nationality by the wife of such a national. The Convention also grants alien wives "specially privileged naturalization procedures", which are not given to the alien husbands of nationals.

The rights conferred by this Convention are narrow, and limited to establishing the independent nationality of a married woman, and facilitating naturalization in cases where a married woman wishes to acquire her husband's nationality. In particular, the treaty does not address the situation where a married man wishes to acquire his wife's nationality. It is therefore of limited assistance where the couple wishes to live in the wife's State of nationality. Indeed, domestic legal provisions, reflecting the obligations imposed by this aspect of the Convention, which create privileged naturalization procedures for foreign wives, but not for foreign husbands, have been held by national and international decision-making bodies to violate guarantees of non-discrimination and equality before the law.[19] The treaty has also proved to be controversial. At the time of its preparation, the idea that a State's sovereign interests could be overridden by the principle of non-discrimination was not agreed to by all Member States of the United Nations, and when the

treaty was adopted by the General Assembly, 47 States voted in favour, 2 voted against, with 24 abstaining. At the end of October 2002, only 72 States were party to the Convention.

Human rights, nationality and law

Although the Convention on the Nationality of Married Women remains in effect, in practice it has been largely superseded by other international instruments, particularly in the field of human rights. Four areas of human rights law have been used to resolve difficulties women face as a result of the application of nationality laws. These are:

- Protection against statelessness;
- General human rights guarantees, including the prohibition of discrimination, protection of family life and freedom of movement;
- The specific prohibition of discrimination against women in laws relating to nationality;
- The protection and promotion of human rights of non-citizens.

Protection against statelessness

Two international treaties, the Convention relating to the Status of Stateless Persons, 1954, and the Convention on the Reduction of Statelessness, 1961, address statelessness. The first establishes minimal rights for stateless persons, such as with respect to work and benefits, and obliges States parties to treat stateless persons no less favourably than aliens generally. The second Convention seeks to reduce statelessness. However, commentators have pointed to the weaknesses of these treaties, the few States that have accepted them (54 and 26, respectively) and the absence of a body to supervise or promote them.

International human rights law addresses statelessness more generally. Article 15 of the Universal Declaration of Human Rights affirms the right of all persons to a nationality and declares the right of individuals not to be arbitrarily deprived of nationality.[20] Similarly, article 24 (3) of the International Covenant on Civil and Political Rights asserts the right of every child to acquire a nationality, 1966.[21] However, article 24 does not identify the State that is required to accord the child its nationality. Nor does the article spell out the nationality to which she has a right: the State of her birth, the State of her mother or father, or both. Article 7 of the Convention on the Rights of the Child, 1989, which provides that the child has the right to [acquire a nationality], is similarly imprecise.[22]

Human Rights Committee, General Comment 17 (1989)

8. Special attention should also be paid, in the context of the protection to be granted to children, to the right of every child to acquire a nationality, as provided for in article 24, paragraph 3. While the purpose of this provision is to prevent a child from being afforded less protection by society and the State because he is stateless, it does not necessarily make it an obligation for States to give their nationality to every child born in their territory. However, States are required to adopt every appropriate measure, both internally and in cooperation with other States, to ensure that every child has a nationality when he is born. In this connection, no discrimination with regard to the acquisition of nationality should be admissible under internal law as between legitimate children and children born out of wedlock or of stateless parents or based on the nationality status of one or both of the parents. The measures adopted to ensure that children have a nationality should always be referred to in reports by States parties.

The Human Rights Committee, the body established by the International Covenant on Civil and Political Rights to monitor the implementation of the Covenant, has clarified the requirements of article 24 by stressing the importance of States adopting "appropriate measures, both internally and in cooperation with other States", to ensure that children acquire a nationality at birth on a basis of non-discrimination.[23] The Committee also requires States parties to the Covenant to report on their implementation of this requirement.

At the regional level, article 20 (2) of the American Convention on Human Rights, 1969,[24] and article 6 (4) of the African Charter on the Rights and Welfare of the Child, 1990,[25] provide that a person with no other nationality entitlement acquires the nationality of her place of birth. The American Convention on Human Rights also includes provisions to address the arbitrary deprivation of nationality, a phenomenon which has created a widespread statelessness.

Concern about arbitrary deprivation of nationality and statelessness led the Commission on Human Rights in resolutions adopted in 1998 and 1999 to call upon States to refrain from measures and legislation, discriminatory on grounds of race, colour, gender, religion, or national or ethnic origin, that impair their right to a nationality, especially if they render a person stateless, and to repeal such legislation if it already exists.[26] At the request of this Commission, the Secretary-General of the United Nations sought information from States about their laws on the acquisition and deprivation of national-

ity, and provided this information to the Commission.[27] The International Law Commission has also adopted a set of draft articles on nationality in relation to succession of States, and has recommended its adoption by the General Assembly in the form of a Declaration. The Assembly took note of the draft articles at its fifty-fifth session in 2000, and invited Governments to submit comments and observations on the idea of a treaty on this area for the Assembly's consideration in 2004.[28] The International Law Commission's draft articles emphasize the right to nationality, non-discrimination and the goal of prevention of statelessness, rather than its reduction. In particular, they provide that habitual residents of a successor State are presumed to acquire the nationality of that State. States are also called on to take all appropriate measures to allow families to remain together or be reunited.

Discrimination

Since human rights treaties do not accord individuals the right to the nationality (and the rights flowing from that nationality) of a particular State, human rights claims with respect to nationality have not been based on the right to nationality, but have been framed in other ways. Most commonly, human rights provisions prohibiting discrimination, interference with family rights and the denial of freedom of movement have been drawn on to assert a right to nationality. Other human rights provisions, including those relating to the rights of children, have also been invoked.

Most international and regional human rights treaties contain prohibitions on discrimination, including on the basis of sex, with respect to the rights guaranteed within the treaty. The International Covenant on Civil and Political Rights and the Inter-American Convention on Human Rights contain free-standing prohibitions of discrimination, and guarantees of equality before the law in their articles 26 and 24, respectively. The principle of non-discrimination on the basis of sex and the guarantee of equality before the law are also contained in the constitutions or other laws of many States. These principles have been invoked in cases at international, regional and domestic levels, where adverse consequences resulting from discriminatory nationality laws have been alleged.

In one of the earliest of these cases, *In re Aumeeruddy-Cziffra v. Mauritius*,[29] 20 Mauritian women petitioned the Human Rights Committee under the First Optional Protocol to the International Covenant on Civil and Political Rights, claiming that the Mauritian Immigration Amendment Act of 1977 and the Deportation Act of 1977 were discriminatory because they limited the rights of foreign husbands, but not foreign wives, to attain Mauritian resident status, and that this violated the legal obligations Mauritius had accepted through ratification of the Covenant. The Committee concluded that while Mauritius may be justified in restricting the access of aliens to its territory and could expel them for security concerns, legislation, which subjected foreign husbands of Mauritian nationals, but not foreign wives of nationals to such restrictions, was discriminatory and could not be justified. Mauritius was requested to adjust its legislation in order to eliminate its discriminatory aspects, bring the legislation into line with its obligations under the Covenant and provide remedies for the victims of the violations.

Potential discriminatory nationality legislation was also considered by the Inter-American Court of Human Rights, at the request of the Government of Costa Rica in its 1984 advisory opinion on the *Proposed Amendments to the Naturalization Provisions of the Constitution of Costa Rica*.[30] One proposal provided for preferential treatment for foreign women who married Costa Rican nationals, allowing such women to become naturalized citizens in cases where they lost their nationality upon marriage, or where they indicated a desire to take on Costa Rican nationality after two years of marriage and two years of residency in Costa Rica. Foreign men who married Costa Rican nationals were not granted these privileges.

The Court observed that the proposed amendment was based on the principle of family unity. It considered that this principle was underpinned by the assumption that members of the family should have the same nationality, and notions of paternal authority, whereby it was the husband who was privileged by the law to determine the place of family domicile and administer marital property. Viewed in this way, the Court concluded that the preferential treatment accorded to women by the proposed amendment was "an outgrowth of conjugal inequality"[31] and contravened article 17 (4) of the Inter-American Convention on Human Rights, which provides for equality of rights and responsibilities in marriage, and article 24 of the treaty, requiring equal protection of the law.

An alternative proposal which would apply to all foreigners marrying Costa Ricans was also considered and determined by the Court to be based upon equality between spouses and accordingly consistent with the Convention. This part of the Court's decision highlights the limitations of an approach based on equality. Provided the State applies its laws without discrimination, guarantees of equality before the law do not preclude States from making naturalization or the enjoyment of rights, such as entry or residency, harder for all foreign spouses on a basis of non-discrimination. Indeed, in response to a successful challenge based on sex discrimination, the United Kingdom Government amended immigration rules to make it as hard for foreign wives to join their husbands settled in the United Kingdom as it has been for foreign husbands to join their wives.[32]

Decisions by the institutions established by the European Convention on Human Rights and Fundamental Freedoms also point to the limitations of relying on the prohibition of discrimination in the context of the European Convention, and more generally. In *Family K and W v. The Netherlands* (1985),[33] the applicants, a Dutch woman and her foreign husband, complained that they had been discriminated against in their enjoyment of family life, in contravention of articles 14 and 8 of the Convention, which prohibit discrimination in the enjoyment of the rights in the treaty, and the right to respect for family life, because a Netherlands provision allowing the foreign wife of a Dutch citizen to obtain Dutch nationality by a declaration of her wish to do so to the local mayor did not apply to foreign husbands of Dutch citizens. Had this procedure been available to foreign husbands, the husband would have obtained Dutch nationality and the authorities would have been unable to deport him from the Netherlands as an undesired alien. The European Commission concluded that as there is no right to nationality in the European Convention, article 14 could not be used to establish a right to equality in nationality law. The Commission determined, however, that the exclusion of a person from a State in which his or her close relatives lived could constitute interference with the right to family life and thus violate article 8. This right was not absolute, however, but was subject to interference by a public authority in accordance with the law where this was necessary in a democratic society for the prevention of disorder and crime, for the protection of health and morals or for the protection of the rights and freedoms of others. In the particular case, the interference resulting from the husband's deportation was found to be justified, as the husband had been convicted of heroin dealing, and declared an undesired alien in accordance with the Aliens Act.

The right to respect for family life

The case of *Family K and W* highlights the potential of the enjoyment of the right to respect for family life as a vehicle for resolving disadvantages caused by nationality provisions. In *Abdulaziz, Cabales and Balkandali v. United Kingdom*,[34] the European Commission and Court of Human Rights considered a provision in the United Kingdom immigration rules requiring that foreign women who were settled legally in the United Kingdom either be citizens of the United Kingdom, born in the United Kingdom or have at least one parent born there, before their foreign husbands or fiancés could join them. Foreign men who were settled lawfully in the United Kingdom could have their foreign wives and fiancées join them and settle there without restriction.

Admitting that the rules were discriminatory, the United Kingdom Government presented statistical and social data to show why it was reasonable to take restrictive measures against the entry of the foreign husbands and fiancés of women with rights of residency within the United Kingdom, and that the measures were reasonable and proportionate to the ends sought, which were to protect the domestic labour market at a time of high unemployment. The Government argued that, since men were more likely to seek paid work than women, male immigrants would have a greater impact on the employment situation than women, and restrictions on the entry of foreign men would lessen the strains on society imposed by immigration. Although protection of the domestic labour market was considered to be legitimate, the European Court of Human Rights determined that this aim could not justify the distinction made in the legislation on the basis of sex. The legislation was held to be disproportionate to its purported aim, and the reasons put forward for the difference in treatment on the ground of sex insufficiently weighty to justify its incompatibility with the Convention. The Court supported this conclusion by making clear that the "advancement of the equality of the sexes is today a major goal in the member states of the Council of Europe. This means that very weighty reasons would have to be advanced before a difference of treatment on the ground of sex could be regarded as compatible with the Convention."[35]

Although discrimination on the basis of sex in the enjoyment of the right to respect for family and private life was made out in the *Abdulaziz* case, the European Court of Human Rights found that the rules did not constitute disrespect for family life taken alone, because the women complainants knew or should have known the effect of the rules. In addition, they had not shown that obstacles existed to establishing family life in their own, or their husbands', States. However, the right to family life in article 8 of the European Convention has been relied on in other cases to secure the rights of foreign spouses to entry and residence and related rights.

In *Berrhab v. the Netherlands*,[36] the residency permit of a foreign husband who had been married to a Dutch national was not renewed after the couple's divorce, and the husband was arrested and his deportation ordered. The European Court of Human Rights decided that where a non-national has real family ties in the State from which he is ordered to be deported, and the deportation would jeopardize the maintenance of those ties, deportation would be justified only if the interference with family life is not excessive in comparison with the public interest to be protected. Here the husband was the auxiliary guardian of his daughter by his former wife, and regularly exercised his visitation rights with respect to their daughter. In addition, he had not been convicted of any criminal offence. As such, the deportation order was considered to violate the right to family life in article 8 of the Convention.

Again, in *Beldjoudi v. France*,[37] the European Court of Human Rights considered a French wife's challenge to the deportation of her foreign spouse on the basis that it would violate the right to family life. Although the husband had been convicted of a number of criminal offences over ten years previously, he had been born in France, served in the French military and all his close relatives had lived in France for several decades. In these circumstances, the Court held that his deportation would not be proportionate to the legitimate aim pursued, and therefore violated the rights of both the wife and the husband to family life. In this case, one judge referred to a concept of "integrated aliens", who should be assimilated as nationals because of their long and established family life.

Family life rights provide scope for addressing disadvantages caused by discriminatory nationality, immigration and related laws. However, such rights do not explicitly establish the right of an individual to nationality and citizenship. As these decisions in cases relying on these rights show, family life rights are usually not absolute, and are frequently balanced against the State's interest in maintaining public order or preventing crime.[38] Thus, where the presence of foreign spouses is determined to compromise public order, such as where they have been convicted of criminal offences, family life rights are usually outweighed. An approach based on family life rights might also place pressure on a wife to maintain family life against her own best interests.

Freedom of movement

In some cases, the right to freedom of movement has been used as a vehicle to address disadvantages flowing from the application of nationality laws. In *Rattigan and Others v. Chief Immigration Officer, Zimbabwe and Others*,[39] the Supreme Court of Zimbabwe concluded that the denial of residence and work permits to foreign husbands of Zimbabwean wives, in practical terms, violated the wives' right to move freely throughout Zimbabwe, reside in any part of Zimbabwe or enter and leave Zimbabwe, as they would be forced to choose between remaining in Zimbabwe without their husbands or living elsewhere with them. Similarly, in *Salem v. Chief Immigration Officer and Another*,[40] the Supreme Court of Zimbabwe concluded that a Zimbabwean wife's right to freedom of movement incorporated the right of her foreign husband to engage in employment or other gainful activity in Zimbabwe, because if her husband were denied entry or permission for employment she would be forced to leave Zimbabwe to join her husband.

Again in the *Unity Dow* case, the Botswana Court of Appeal accepted that, as well as being discriminatory, the Citizenship Act curtailed Ms. Dow's right to freedom of movement: she could only enter Botswana with her non-national children when accompanied by her husband, because they held his nationality (and could accordingly travel only on his passport). As a citizen of Botswana (and holder of a Botswana passport), she could leave and return to Botswana on her own, but her freedom of movement was restricted in practical terms by the restrictions upon the re-entry of her non-national children.

Other rights

Other human rights provisions used by courts to address the discriminatory affects of nationality laws include those relating to the rights of the child. As indicated earlier, several human rights treaties, including the International Covenant on Civil and Political Rights and the Convention on the Rights of the Child, have been the basis for such decisions. In 1997, in the case of *Benner v. The Secretary of State of Canada*,[41] the Supreme Court of Canada held that nationality provisions which treated those claiming nationality on the basis of their mother's Canadian citizenship differently from those claiming nationality on the basis of their father's Canadian citizenship violated the equality provisions of the Constitution. The relevant nationality provisions considered by the Court entitled children born outside Canada to a Canadian father to claim nationality through registration within a certain time. Here the plaintiff had been born in the United States to a Canadian mother and a father with United States citizenship. Those born outside Canada to a Canadian mother were required to apply for Canadian nationality, with part of the application procedure requiring security, criminal record checks and swearing an oath. If an applicant was shown to have been the subject of a criminal charge, she or he was prevented from taking the oath and from becoming a Canadian citizen until the charges were resolved. If the applicant had been convicted of an indictable offence, she or he could not become a Canadian citizen for three years after the conviction, while some offences precluded citizenship entirely.

The Canadian Government argued that any discrimination resulting from the nationality provisions was imposed on the plaintiff's mother, not on the plaintiff himself, and that, accordingly, he could not challenge the provisions via the Constitutional guarantee of non-discrimination on the basis of sex. This argument was rejected, with the Supreme Court determining that there was a connection between the plaintiff's rights and the distinction in the nationality provisions between women and men. Mr. Benner's right to nationality depended on whether his Canadian parent was a woman or a man; thus, he was the target of the provisions and the individual with the greatest interest in challenging their constitutionality. In addition, given the unique link between parent and child, the Court considered it was appropriate to extend the class of those who could claim discrimination on the basis

of sex in this context. The Court emphasized that where "something so intimately connected to and so completely beyond the control of an applicant as the gender of his or her Canadian parent" can restrict access to benefits such as nationality, the applicant may invoke the constitutional guarantee of equality.[42]

The Constitutions of some States provide particular guarantees that have also proved effective in this context. For example, the Constitutional Court of South Africa has concluded that a discretion to deny a temporary residence permit to an individual who is married to a South African citizen or permanent resident and who wishes to reside permanently in South Africa would violate that individual's constitutional right of dignity, because it would adversely affect her ability to achieve personal fulfilment through her relationship with her partner and, in particular, her ability to give effect to her marriage through cohabitation.[43]

These cases show judicial creativity in addressing the problems caused by nationality laws, but few judicial decisions confront such discrimination directly. Other decisions have linked such discrimination to other rights, such as those of family life and freedom of movement. Where the right relied upon is that of family life, it reinforces traditional understandings of the role of women within the family, as well as the nature of the family. This in turn excludes the consideration of the nationality rights of unmarried women, or of women in non-traditional family relationships. In many cases (*Unity Dow, Aumeeruddy-Cziffra, Abdulaziz, Cabales and Balkandali*) the disadvantage is felt by the alien seeking to enter (or remain in) the State, but is based on discrimination against national women. Reasoning based upon the right to freedom of movement can be more beneficial to women. It moves the focus from the family and rejects the often-expressed argument that women's freedom of movement is not inhibited if they remain free to go to the State where the spouse has nationality—the assumption of the wife acquiring her husband's nationality and accepting his place of residency. Differing nationalities within a family may give rise to differing rights of residency—upholding freedom of movement allows for movement to, and residency within, all States concerned.

Convention on the Elimination of All Forms of Discrimination against Women, 1979

Article 9 (1): States Parties shall grant women equal rights with men to acquire, change or retain their nationality. They shall ensure in particular that neither marriage to an alien nor change of nationality by the husband during marriage shall automatically change the nationality of the wife, render her stateless or force upon her the nationality of the husband.

Article 9 (2): States Parties shall grant women equal rights with men with respect to nationality of their children.

Convention on the Elimination of All Forms of Discrimination against Women

Development of the non-discrimination approach is an important aspect of human rights law. Article 9 of the Convention on the Elimination of All Forms of Discrimination against Women contains the most explicit prohibition on gender discrimination in nationality laws in any human rights treaty. Article 9 requires States parties to grant women equal rights with men to acquire, change or retain their nationality. It provides that neither marriage to an alien nor change of nationality of the husband will change the nationality of a wife rendering her stateless, or force her husband's nationality on her. Article 9 also grants women equal rights with men with respect to their children's nationality.

Article 9 does not guarantee women the right to choose their nationality, nor that of their children, but gives women the same rights as men in these matters. Thus, if a State which is party to the Convention denies nationality through descent to both parents, relying instead on place of birth, a woman national of that State, with a foreign husband, whose child is born outside her own State of nationality, cannot bestow her nationality upon that child.

The reach of article 9 is adversely affected by the large number of reservations and interpretive declarations which have been made to either article 9 (1) or (2), or both. As of end of October 2002, reservations to article 9 had been made by Algeria, the Bahamas, Bahrain, Cyprus, the Democratic People's Republic of Korea, Egypt, Iraq, Jordan, Kuwait, Lebanon, Malaysia, Morocco and Tunisia. In its reservation to the Convention, Singapore indicates that, as it is geographically one of the smallest countries in the world and the most densely populated, it "reserves the right to apply such laws and conditions governing the entry into, stay in, employment of and departure from its territory of those who do not have the right under the laws of Singapore to enter and remain indefinitely in Singapore and to the conferment, acquisitions and loss of citizenship of women who have acquired such citizenship by marriage and of children born outside Singapore". In an explanatory declaration on ratification, Turkey also indicates that its domestic

laws do not conflict with article 9, given that the domestic provisions seek to address statelessness.[44] Some States, such as Fiji, Ireland, Liechtenstein, the Republic of Korea, Thailand and the United Kingdom, have removed reservations that they had made to article 9 on ratification.

In addition to those reservations and declarations directed explicitly to article 9, some States have made broad reservations that potentially affect the nationality rights of women. These include those which subordinate the Convention to their national law or religion, for example Mauritania, Pakistan and Saudi Arabia. Moreover, some States that have accepted the Convention without reservation maintain discriminatory nationality laws, while the treaty does not create obligations for those that have not ratified or acceded to its terms.

Several States parties to the Convention, including Austria, Denmark, Finland, France, Germany, Ireland, Mexico, the Netherlands, Norway, Portugal, Spain, Sweden and the United Kingdom, have lodged objections or communications to these reservations and declarations, but no State has gone so far as to indicate that the Convention is not in force between them and the reserving States.

The Committee on the Elimination of Discrimination against Women routinely questions States parties on reservations and declarations when it considers reports from those States. In its concluding comments on the reports, it has consistently identified discriminatory nationality laws as an obstacle to the enjoyment by women of their human rights. It has also explained in General Recommendation 21 on equality in marriage and family relations how denial of nationality prevents women from full participation within society. The entry into force of the Optional Protocol to the Convention on 22 December 2000, which enables the Committee to consider individual communications, will provide the Committee with a forum in which to develop jurisprudence and contextual understanding of article 9 on the basis of individual claims. As of end of October 2002, 47 States had accepted the Optional Protocol, thereby providing the opportunity for women from those States to petition the Committee in regard to violations of article 9.

Human rights of non-citizens

Stressing States' human rights obligations with respect to non-nationals and thus lessening some of the adverse effects of non-citizenship and statelessness is another important area where human rights law can promote the rights of women. International and regional human rights treaties apply to all individuals within a State's territory, and not only the nationals of the State party.[45]

The particular challenges faced by those who work as migrant workers outside their State of nationality formed the background to the elaboration of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (MWC), adopted by the General Assembly in 1990. The Convention, which covers all migrant workers and their families, establishes non-discrimination with respect to the rights of such workers, the assurance of fundamental human rights and equality of treatment between nationals and migrant workers with regard to rights related to work. The Convention, which has 19 States parties as of end of October 2002, requires one more ratification before it enters into force.

Women migrant workers are typically found as temporary workers in the informal labour market of most countries, "working as domestic, industrial or agricultural labour or in the service sector".[46] In most cases, such workers have special visas which require them to work with their sponsoring employer. If these workers leave their employers, regardless of how abusive they may be, they lose their jobs, and their legal immigration status. Many women who migrate for promised jobs in domestic service, catering or entertainment find themselves tricked into prostitution. Since they are often illegal or undocumented immigrants, these women are vulnerable to significant abuse. The particular vulnerability to violence of women migrant workers has been addressed in resolutions adopted by the General Assembly, the Commission on the Status of Women, the Commission on Crime Prevention

Committee on the Elimination of Discrimination against Women, General Recommendation 21: Equality in Marriage and Family Relations (CEDAW, thirteenth session, 1992)

6. Nationality is critical to full participation in society. In general, States confer nationality on those who are born in that country. Nationality can also be acquired by reason of settlement or granted for humanitarian reasons, such as statelessness. Without status as nationals or citizens, women are deprived of the right to vote or to stand for public office, and may be denied access to public benefits and a choice of residence. Nationality should be capable of change by an adult woman and should not be arbitrarily removed because of marriage or dissolution of marriage or because her husband or father changes his nationality.

and Criminal Justice and the Commission on Human Rights. The situation of migrant women workers and their vulnerability to violence was also addressed by the General Assembly at its twenty-third special session, "Women 2000: gender equality, development and peace for the twenty-first century", held in New York from 5 to 9 June 2000, and the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance, held in Durban from 31 August to 8 September 2001.[47]

Protection of the migrant workforce should be of concern to sending, as well as receiving, States, for much labour migration is a matter not only of individual choice but often also of State policy. Some States encourage the entry of workers on conditions of short-term or temporary labour, for example to alleviate labour shortages and to encourage corporate investment by providing a cheap (often female) workforce. Other States facilitate the migration of their nationals to work abroad as part of their policy for economic development. This serves to alleviate domestic unemployment and poverty through the receipt of the workers' remittances (especially when in hard currency).

Sending States have often been reluctant to take steps to minimize the vulnerability of their migrant workers, for example through human rights and language instruction, and to offer protection to nationals who suffer abuse abroad that the authorities in the receiving State are unwilling to address. They may fear that the receiving State will cease to accept the migrant workforce, or deem the injured alien a wrongdoer, as in the case of trafficking.

The MWC provides basic human rights protection for migrant workers and, most importantly, their families. Article 29 of the MWC echoes the Convention on the Rights of the Child by providing that each child of a migrant worker shall have the right to a name, to birth registration and to a nationality, but does not address the question of which State should accord nationality (place of birth, mother's State of nationality, father's place of nationality). More detailed rights are accorded to migrant workers, whose presence in the State of employment is "documented" or "regular". The MWC does not accord such people nationality or citizenship rights, but attempts to ensure some continuity of residence. Thus article 44 (2) requires States parties to take appropriate measures within their competence "to facilitate the reunification of migrant workers with their spouses or persons who have with the migrant worker a relationship that, according to applicable law, produces effects equivalent to marriage, as well as with their minor unmarried children". They are also to be accorded equality with nationals with respect to a number of rights, including access to education, health and some social services. In the case of death or dissolution of marriage of a migrant worker, the State of employment undertakes to consider favourably authorization to stay for family members who are residing within the State.

While the MWC attempts to cover some of the disadvantages for women referred to above, it does not confer any citizenship rights as such. Further, despite requiring only 20 ratifications before it enters into force, as of end of October 2002 it had been ratified or acceded to by only 19 States, primarily from migrant-exporting States. The General Assembly Declaration on the Human Rights of Individuals Who are not Nationals of the Country in which They Live[48] provides a catalogue of fundamental rights for aliens, including the right of the spouse of an alien lawfully in the territory to accompany, join and stay with the alien. However, this is not a binding treaty obligation.

The susceptibility to violence and abuse suffered by women as a consequence of their double marginalization as women and as migrants has also been the subject of resolutions of the General Assembly,[49] the Commission on Human Rights, the Commission on the Status of Women, and reports of the Secretary-General, including with respect to crime prevention and criminal justice.[50] Continued concerns about the plight of migrant workers led the Commission on Human Rights in 1999 to appoint a Special Rapporteur on the human rights of migrants with the mandate "to examine ways and means to overcome the obstacles existing to the full and effective protection of the human rights of this vulnerable group, including obstacles and difficulties for the return of migrants who are non-documented or in an irregular situation . . ."[51] The Special Rapporteur's mandate explicitly requires her to "take into account a gender perspective when requesting and analysing information, as well as to give special attention to the occurrence of multiple discrimination and violence against migrant women". Sexual violence can of course result in the birth of children, leading to the issues of nationality of children discussed above. In her first report, the Special Rapporteur, Ms. Gabriela Rodriguez Pizarro, noted that the MWC would be an important protective tool if it were brought into force. The report considered the day-to-day problems faced by women migrants, who suffer gender-based violence and receive no response from the authorities, to be a matter of deep concern and called for effective action.

Alternative visions

Dual and multiple nationalities

When people of different nationalities marry and/or have children, difficult questions of acquisition and retention of nationality may arise. Nationality laws formulated at the beginning of the twentieth century assumed static populations. Approaches such as women's dependent nationality disadvantaged women. A number of States have now

adopted more flexible rules about the nationality of women who marry foreigners by allowing them to retain their own nationality—but other States still have not.

Practical restrictions imposed upon the movement and residency choices of parents and their children with different nationalities have called for fresh thinking about the relationship between individuals and States. For example, international law has attempted to minimize statelessness, because a stateless person has no right of residency in any State and no State has the right to offer protection in the case of abuse. Human rights treaties attempt to reduce potential statelessness by asserting the right of all people to a nationality. However, they provide limited relief because they do not specify how this right is to be fulfilled. In this context, the United Nations Commission on Human Rights has resolved that the arbitrary deprivation of nationality on racial, national, ethnic, religious or gender grounds is a violation of human rights.

Until the end of the twentieth century, many States rejected the notion of offering individuals dual or multiple nationality, on the grounds that a person could not be a loyal citizen of more than one State. The idea of dual or multiple nationality is increasingly accepted, and a number of States have detached the concept of nationality from a single State unit by legislating for dual nationality. Allowing individuals to have dual (or even multiple) nationalities enhances their enjoyment of the rights that flow from these nationalities under international and domestic law. Spouses who have different nationalities are also accorded greater freedom of movement and in selecting their joint place of residency.

The European Convention on Nationality, 1997, established a code for dual nationality. This Convention addresses nationality law from the standpoint of two principles—avoidance of statelessness, and equality—and provides for the achievement of equality, while at the same time preserving family life. This Convention determines how nationality is to be accorded and provides against its arbitrary deprivation. Article 6 (1) (*a*) provides that a State party shall grant its nationality to children born to a national within the State, and article 6 (4) that a State party shall "facilitate in its internal law the acquisition of its nationality" for spouses of its nationals and those children of its nationals who are not already nationals by birth. Article 14 (1) requires States to allow dual nationality in the case of spouses and children who have automatically acquired more than one nationality by operation of law, and article 15 permits States to allow dual nationality generally. The perceived problems of dual nationality are thus reduced to a matter of coordination. Family members may choose to maintain dual nationality, providing the family with unity of nationality and the security of residence, freedom from deportation and access to the benefits that dual nationality provides, without sacrificing the nationality of either spouse.

European Convention on Nationality, 1997

Article 4 (*d*): Neither marriage nor the dissolution of a marriage between a national of a State Party and an alien, nor the change of nationality by one of the spouses during marriage, shall automatically affect the nationality of the other spouse.

Article 5: Non-discrimination

(1) The rules of a State Party on nationality shall not contain distinctions or include any practice which amounts to discrimination on the grounds of sex, religion, race, colour, or national or ethnic origin.

(2) Each State Party shall be guided by the principle of non-discrimination between its nationals, whether they are nationals by birth or have acquired its nationality subsequently.

Supranational citizenship

Another model, also from Europe, attaches citizenship to a supranational entity, in this case the European Union. The vision is based on the identification of a person as European, as well as a national of an individual State. Article 8 of the Treaty of European Union (Maastricht Treaty), 1992, provides that nationals of the individual States of the Union are citizens of the Union.[52]

At present, the attributes of European citizenship are limited to the right to move freely and reside within any State of the Union; the right when outside the Union to seek diplomatic protection from the authorities of any member State; and the right to petition the European Parliament and to apply to the European Ombudsman. The concept of European citizenship is not detached from that of national citizenship, as such citizenship is accorded only to the nationals of member States of the Union. The sovereignty of member States with respect to nationality laws is therefore not weakened; and European citizenship heightens the exclusion for those who are denied nationality in any State of the Union, including migrant workers and, in some instances, their children.

Conclusions and recommendations

This issue of *Women2000 and Beyond* has described scenarios in which inequality in the bestowal and retention of nationality causes particular hardships for spouses of different nationalities. International human rights standards to redress these inequalities exist within the human rights treaties, article 9 in particular of the Convention on the Elimination of All Forms of Discrimination against Women, 1979. Judicial decisions indicate how these standards can be used to challenge existing inequalities between men and women. However, there are many obstacles to the effective implementation of human rights standards.

Obstacles to the implementation of human rights standards

- International law accords States considerable discretion with respect to the conferral of nationality upon individuals.
- General human rights provisions on nationality lack balance: individuals have a right to nationality, but States have no obligation to accord it; there is no State responsibility for the failure of a State to accord nationality to a stateless person.
- The Convention on the Elimination of All Forms of Discrimination against Women, 1979, has not yet been universally ratified. As of end of October 2002, there were 170 States parties to the Convention. In comparison, the Convention on the Rights of the Child, 1989, has 191.
- Article 9 of the Convention on the Elimination of All Forms of Discrimination against Women provides for equality between women and men in the bestowal and retention of nationality, and in according nationality to children. A number of States have entered reservations or interpretive declarations to the treaty, thereby indicating that they do not accept the obligations created by the article.
- The International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, 1990, has received insufficient ratifications to come into force.
- International human rights obligations have not always been incorporated into domestic legislation.
- Courts have not always been willing to apply norms of non-discrimination to the acquisition and consequences of nationality.
- Equality in nationality law can be seen as contrary to traditional or customary laws and practices.
- There are inadequate linkages between migration, trafficking, prostitution, immigration laws and human rights requirements.

The intersection of legal issues of nationality, immigration, discrimination, poverty, migration, violence against women and the family, along with gendered stereotypes about migration patterns and personal relationships, undermines women's enjoyment of a range of civil, political, economic and social rights, and excludes them from the benefits of citizenship. Further action to overcome these obstacles is required at both international and national levels.

Recommended actions at the international level

State action at the international level includes ratification of international treaties:

a. Ratification and implementation by States of existing treaties, including the Convention on the Nationality of Married Women, the Convention on the Elimination of All Forms of Discrimination against Women and its Optional Protocol, and the Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, 1990;
b. Withdrawal of reservations to international treaties, especially to article 9 of the Convention on the Elimination of All Forms of Discrimination against Women, 1979; and
c. Ratification and national implementation of international instruments that allow individuals to access rights at the international level, for example the First Optional Protocol to the International Covenant on Civil and Political Rights, 1966, and the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women, 1999.

Recommended actions at the national level

Legal and administrative reforms are also needed in domestic law to ensure implementation of international standards. State action at the domestic level would include:

a. Amendment of domestic laws, administrative practices and regulations relating to nationality and citizenship by incorporation of the Convention on the Elimination of All Forms of Discrimination against Women, article 9, into national law;
b. Amendment of domestic laws to facilitate the procedures for the acquisition of nationality by both foreign wives and foreign husbands in the State of nationality of the other;
c. Removal of legal obstacles to married women satisfying residency requirements for the acquisition of citizenship where the marriage is violent or abusive, or prematurely terminated at the will of the husband;
d. Training of the judiciary on the human rights significance of these provisions;

e. Gender training for immigration, law enforcement and administrative officers;
f. Removing barriers under national law to the holding of dual and multiple nationalities;
g. Facilitating procedures for registration of marriages and births to ensure documentary proof of nationality; and
h. Minimizing the vulnerability of their migrant workers, for example through human rights and language instruction, and ensure national protection to migrant workers abroad.

Recommended actions for non-governmental organizations (NGOs)

Local and international NGOs can initiate actions to encourage States to take these measures and to ensure equality in their nationality laws. Such actions would include:

a. Initiating test-case litigation in domestic courts and regional and international human rights arenas to challenge discriminatory nationality laws using the international and national case law discussed above;
b. Disseminating of national and international case law challenging discriminatory nationality laws for the use in argument in similar claims elsewhere. Such claims have been made successfully in some States, both to challenge the overall impact of nationality laws (as in *Unity Dow*) and to challenge some anomalous situations that have survived legal reform (for example in Canada). In other jurisdictions, such challenges have been unsuccessful (Bangladesh and Pakistan) or partially successful (Nepal). Even unsuccessful challenges can raise consciousness and prepare the way for reform;
c. Considering the use of the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women, 1979, and the International Covenant on Civil and Political Rights, 1966, First Optional Protocol, 1966; and
d. Informing members of the human rights treaty bodies of these inequalities through "shadow" reports, so that States are questioned on them in the reporting processes.

Conclusions

The passage and implementation of legislation at the national level will not by itself guarantee equality between women and men in the conferment and enjoyment of nationality and citizenship rights, but the existence of such laws is essential. Discriminatory nationality laws create vulnerability for women. This vulnerability has great practical impact at a time when huge numbers of women are leaving their own States, voluntarily through migration and involuntarily (through displacement and trafficking). Susceptibility to violence, exploitation and loss of access to children who hold a different nationality is increased when women are denied the protections accorded to citizens and nationals. Unlike many other violations of women's human rights, the denial of nationality to women or their children on an equal basis with men involves no non-State actor. It is within the hands of Governments to fulfill their obligations, including through:

- Passing and implementing appropriate legislation, by complying with the spirit as well as the decisions of human rights bodies;
- Providing gender training to immigration officials;
- By incorporating article 9 of the Convention on the Elimination of All Forms of Discrimination against Women into their domestic law;
- By becoming parties to the Optional Protocol to the Women's Convention; and
- By giving effect to dual nationality as a just and fair way of addressing these questions.

States must appreciate that the denial of equal nationality rights to women undercuts their enjoyment of other human rights through the denial of the basic legal protections of citizenship, of equality within the family, of identity and belonging, and of personal security and freedom from violence.

This issue of Women2000 and Beyond
was compiled by the United Nations Division for the Advancement of Women, with Christine Chinkin, Consultant.

End notes

1 T. H. Marshall, *Class, Citizenship and Social Development* (New York, Doubleday, 1965), p. 92; Nitza Berkovitch, *From Motherhood to Citizenship: Women's Rights and International Organizations* (Baltimore, Johns Hopkins University Press, 1999), pp. 10-15.

2 *Official Records of the General Assembly, Forty-ninth Session* (A/49/38), report of the Committee on the Elimination of Discrimination against Women on its thirteenth session, 1994, p. 2.

3 The Committee on the Elimination of Racial Discrimination has considered a number of situations where the rights of non-nationals are more limited than those of nationals. In *Zaid Ben Ahmed Habassi v. Denmark*, it considered the refusal of a loan by a Danish bank on the sole ground that the claimant did not hold Danish nationality (United Nations doc. CERD/C/54/D/10/1997). In *BMS v. Australia*, it considered a quota system limiting the number of practising licences granted to non-citizen medical doctors (United Nations doc. CERD/C/54/D/8/1996). The preliminary report of the Special Rapporteur on the rights of non-citizens indicates that in a number of countries constitutional guarantees of human rights apply only to nationals (E/CN.4/Sub.2/2001/20/Add.1).

4 Nottebohm Case *(Liechtenstein v. Guatemala)* [1955] ICJ Reports 4, p. 23.

5 Proposed Amendments to the Naturalization Provisions of the Constitution of Costa Rica, Inter-American Court of Human Rights, Advisory Opinion, OC-4/84 of 19 January 1984. Inter-American Court of Human Rights, Series A, No. 4 (1984), para. 35.

6 UNHCR, *The State of the World's Refugees* (UNHCR, OUP, 1997-1998), pp. 230 and 248-250.

7 Ibid., p. 233.

8 The Special Rapporteur on violence against women, its causes and consequences refers to the predicament of Rohingya women in northern Arakan State, Myanmar, who are denied citizenship by Myanmar, are unable to cross borders legally because they lack documentation and become vulnerable to being trafficked. Report of the Special Rapporteur on violence against women, its causes and consequences (United Nations doc. E/CN.4/2000/68), 29 February 2000.

9 Refugee Convention, article 1 (A) (2).

10 United Nations, *Convention on the Nationality of Married Women: Historical Background and Commentary* (United Nations doc. E/CN.6/389), Sales No. 62.IV.3, p. 2.

11 Karen Knop and Christine Chinkin, "Remembering Chrystal Macmillan: Women's Equality and Nationality in International Law", *Michigan Journal of International Law*, No. 22 (2001), p. 525.

12 Berkovitch, op. cit., p. 80.

13 Knop and Chinkin, loc. cit., p. 570.

14 Economic and Social Council resolution 11 (II) of 21 June 1946 established the Commission on the Status of Women.

15 The United States Immigration and Naturalization Service estimates that between 100,000 and 150,000 women advertise themselves as potential mail-order brides each year. The advent of the Internet means that the services are more widely available. The United States of America, the United States Department of Justice, "International matchmaking organizations: A report to Congress, Immigration and Naturalization Service", 2/99 (Washington, D.C., United States Department of Justice, March 1999); Robert J. Scholes, "Appendix A: The 'mail-order bride' industry and its impact on U.S. immigration", ibid.

16 Egyptian reservation, 18 September 1981; see http://www.un.org/womanwatch/daw/cedaw/reservations.htm

17 Attempts have been made to simplify some of these issues, notably those of child abduction and custody by treaty; for example: the Hague Convention on Certain Questions relating to the Conflict of Nationality Laws (1930); the Hague Convention on the Civil Aspects of International Child Abduction (1980); and the Hague Convention on Intercountry Adoption (1993).

18 See, for example, section 309 of the United States Immigration and Nationality Act, which establishes preconditions to the conferment of United States nationality on a child born out of wedlock to a United States national father which are inapplicable to cases where a child is born out of wedlock to a United States national mother. See also *Miller v. Albright*, 523 US 420 (1998), and *Nguyen v. INS*, 121 S Ct. 2053 (2001), which upheld the validity of this provision.

19 Proposed Amendments to the Naturalization Provisions of the Constitution of Costa Rica, 5 *Human Rights Law Journal*, 161 (1984).

20 The Universal Declaration of Human Rights, General Assembly resolution 217 A (III), United Nations doc. A/810, at 71 (1948).

21 International Covenant on Civil and Political Rights, General Assembly resolution 2200 A (XXI), United Nations doc. A/63/6 (1966).

22 Convention on the Rights of the Child, General Assembly resolution 44/25 (1989), annex, United Nations doc. A/44/49 (1989).

23 CCPR General Comment 17 on Article 24 (1989).

24 American Convention on Human Rights (1969).

25 African Charter on the Rights and Welfare of the Child, OAU doc. CAB/LEG/24.9/49 (1990).

26 Commission on Human Rights, res. 1998/48; Court of Human Rights res. 1999/28.

27 United Nations doc. E/CN.4/1999/56 and Add.1 and 2; United Nations doc. E/CN.4/2000/56 and Add.1 and 2.

28 General Assembly resolution 55/153 of 12 December 2000.

29 Communication No. 35/1978 (1981), United Nations doc. A/36/40 (1981).

30 Proposed Amendments to the Naturalization Provisions of the Constitution of Costa Rica, 5 *Human Rights Law Journal*, 161 (1984).

[31] Ibid., para. 64.

[32] *Abdulaziz, Cabales and Balkandali v. United Kingdom*, European Court of Human Rights, Series A, 94 (1985). See also Knop and Chinkin, loc. cit., pp. 578-579.

[33] *Family K and W v. Netherlands*, No. 11278/84, 43 DR 216 (1985).

[34] *Abdulaziz, Cabales and Balkandali v. United Kingdom*, European Court of Human Rights, Series A, 94 (1985).

[35] Ibid.

[36] European Court of Human Rights, 26 June 1988, Series A, No. 138.

[37] European Court of Human Rights, 26 March 1992, Series A, No. 234-A.

[38] Preliminary report of the Special Rapporteur on the rights of non-citizens (E/CN.4/Sub.2/2001/20/Add.1, paras. 119-133).

[39] [1994] 1 Law Reports of the Commonwealth 343.

[40] [1994] 1 Law Reports of the Commonwealth 354.

[41] [1997] 1 S.C.R 358.

[42] Benner [1997] 1 S.C.R 397-401.

[43] *Dawood v. Minister of Home Affairs*, 2000 (8) BCLR 837. See Knop and Chinkin, loc. cit., pp. 553-554, where other cases in which the Supreme Court of South Africa has taken this approach are cited.

[44] CEDAW/SP/2002/2.

[45] Preliminary report of the Special Rapporteur on the rights of non-citizens (E/CN.4/Sub.2/2001/20, paras. 29-84).

[46] Report of the Special Rapporteur on human rights of migrants, submitted pursuant to Commission on Human Rights Resolution 1999/44 (United Nations doc. E/CN.4/2000/82), 6 January 2000, para. 56. See also report of the Secretary-General on violence against women migrant workers (United Nations doc. E/CN.4/2000/76), 9 December 1999, para. 11.

[47] Report of the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance, Durban, 31 August–8 September 2001, A/CONF.189/12; *Resolutions and Decisions adopted by the General Assembly during its Twenty-third Special Session*, 5–10 June 2000, S-23/13.

[48] General Assembly resolution 40/144 (United Nations doc. A/RES/40/144 (1985) para. 4).

[49] General Assembly resolution 50/168 (United Nations doc. A/RES/50/168 (1996)); General Assembly resolution 49/165 (United Nations doc. A/RES/49/165 (1995)).

[50] Report of the Secretary-General on the Elimination of Violence against Women (United Nations doc. A/54/69-E/1999/8 and Add. 1 (1999)); report of the Secretary-General on crime prevention and criminal justice (United Nations doc. A/54/289 (1999)).

[51] Court of Human Rights resolution 1999/44 (United Nations doc. E/CN.4/RES/1999/44 (1999)).

[52] European Community Treaty, article 8: (1) Citizenship of the Union is hereby established. Every person holding the nationality of a member State shall be a citizen of the Union. The concept of European citizenship was expanded further by the Amsterdam Treaty, in force 1 May 1999, adding paragraphs a-e to article 8 of the Maastricht Treaty.

The cover design is adapted from "Oops", 1997, by Edwina Sandys.

Women, Peace and Security:

Study submitted by the Secretary-General pursuant to Security Council resolution 1325 (2000)

This study on women, peace and security was mandated by Security Council resolution 1325 (2000) and the preparation was coordinated by the Special Adviser on Gender Issues and Advancement of Women in close cooperation with the Inter-agency Taskforce on Women, Peace and Security. It indicates that while women and girls share experiences with men and boys during armed conflict, the culture of violence and discrimination against women and girls that exists during peacetime is often exacerbated during conflict and negatively affects women's ability to participate in peace processes and ultimately inhibits the attainment of lasting peace.

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